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NEVRO CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BOSTON SCIENTIFIC CORPORATION,

Plaintiff,

v.

DONGCHUL LEE,

Defendant.

Case No.

CV 14 80188 MISC.

**DECLARATION OF DONGCHUL LEE IN SUPPORT OF
NON-PARTY NEVRO
CORPORATION'S MOTION TO
QUASH BOSTON SCIENTIFIC
CORPORATION'S SUBPOENA
FOR PRODUCTION OF
DOCUMENTS AND THINGS**

Date: TBD
Time: TBD
Ctrm: TBD

FAXED

FILED

JUN 20 2014

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BLF

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1 I, Dongchul Lee, hereby declare as follows:

2 1. I have personal knowledge of the facts stated in this declaration, and I could and
3 would testify competently to them if called upon to do so.

4 **Background and Education**

5 2. I live in Agua Dulce, California. I have lived and worked in California throughout
6 the entire time period relevant to this lawsuit.

7 3. I received a Bachelor of Science from Chung-Ang University in Seoul, Korea in
8 1993.

9 4. In 1997, I earned a Masters of Science in Electrical Engineering from the
10 University of Houston in Houston, Texas.

11 5. In 2004, I earned a PhD in Biomedical Engineering from Case Western Reserve
12 University in Cleveland, Ohio.

13 6. During my PhD program, I concentrated in computer modeling. My PhD
14 dissertation was focused on computational modeling of the central nervous system and electrical
15 stimulation of the nervous system.

16 7. In 2006, I accepted a position as a Senior Biomedical System Engineer in the
17 Neuromodulation Division of Boston Scientific, which is located in Valencia, California.

18 **Employment at Nevro**

19 8. In 2013, I became dissatisfied with my career opportunities at Boston Scientific.
20 As a result, I decided to resign. I was considering starting a consulting company, and discussed
21 providing consulting services to Boston Scientific (as well as other spinal cord stimulation
22 companies).

23 9. Nevro Corporation ("Nevro") learned that I was leaving Boston Scientific and
24 offered me a job. Because I had heard of the clinically-superior results Nevro's 10 kHz SCS
25 system was producing, and because I believed Nevro's HF10™ SCS therapy would one day make
26 Boston Scientific's low frequency, paresthesia-based SCS therapy obsolete, I was excited about
27 the prospect of working for Nevro. I therefore accepted Nevro's offer and officially began
28 working for Nevro on November 8, 2013.

1 10. Nevro has never once asked me to disclose trade secrets or confidential
2 information belonging to Boston Scientific. Further, Nevro's management team has repeatedly
3 told me they see no commercial value in learning Boston Scientific's trade secret and confidential
4 information.

5 11. On November 7, 2013, I signed Nevro's Proprietary Information Contract, which
6 among other things states:

7 During my employment by [Nevro], I will not improperly use or
8 disclose any confidential information, intellectual property or trade
9 secrets, if any, of any former employer or any other person to
10 whom I have an obligation of confidentiality, and I will not bring
11 onto the premises of [Nevro] any unpublished documents or any
12 property belonging to any former employer or any other person to
13 whom I have an obligation of confidentiality unless expressly
14 authorized in writing by that former employer or person. I will use
15 in the performance of my duties only information which is
16 generally known and used by persons with training and experience
17 comparable to my own, which is common knowledge in the
18 industry or otherwise legally in the public domain, or which is
19 otherwise provided or developed by [Nevro].

20 12. I have, and will continue to maintain, the terms of my above-stated agreement with
21 Nevro. I have not improperly used or disclosed Boston Scientific's Proprietary Information.

22 **Employment at Boston Scientific and Expedited Discovery**

23 13. Throughout my tenure at Boston Scientific, I often worked from outside the office,
24 either from home or from hotel rooms while traveling. I did not have easy access to my Boston
25 Scientific email from outside of the office. As a result, I (and many of my colleagues) often
26 forwarded documents to our personal email accounts in order to work from remote locations, such
27 as our homes.

28 14. During my last two years at Boston Scientific, I had to travel for work extensively,
including overseas trips to Australia, Canada, and Europe. Not only did this frequent travel cause
difficulty for my family, but it also made it quite difficult for me to keep up with my work at
Boston Scientific. During this timeframe, I worked very long hours, often at odd hours of the day
and/or in significantly different time zones, which increased my need to work from home and
from other outside locations. As a result, I asked Boston Scientific to provide me with a Smart
Phone, which would allow me to access to my company email. Boston Scientific, however,

1 denied my request.

2 15. Given the high volume of work that I had to perform remotely, I often forwarded
3 work documents to my personal Gmail account so that I could access them and work on them
4 from outside the office. From my work at Boston Scientific, I understand that many of my
5 colleagues did so as well. In fact, my colleagues and I often shared documents stored on Google
6 Drive as an easy means of collaborating.

7 16. While many thousands of documents were produced in expedited discovery, I
8 believe most of these documents are either published documents or duplicates of documents held
9 in backup devices, some of which I did not find until performing a more thorough search of my
10 home after commencement of discovery. Due to the nature of this case and the expedited
11 discovery, I was not able to confirm which of the produced documents were actually confidential
12 and/or proprietary to Boston Scientific.

13 17. Through my attorneys, I offered several times to permanently delete any and all
14 documents relating to Boston Scientific, whether confidential or not, that were contained on any
15 computer or electronic storage device that I had at any time and using whatever manner Boston
16 Scientific deems sufficient.

17 **The Nevro Laptops**

18 18. When I started my employment with Nevro in November of 2013, I was assigned a
19 laptop computer (the "Initial Laptop"), which I used to perform my job duties at Nevro.

20 19. I used the Initial Laptop to build hypotheses based on Nevro's HF10™ spinal cord
21 stimulation ("SCS") therapy clinical data. I also downloaded documents to the Initial Laptop that
22 contain highly confidential information belonging to Nevro that is irrelevant to this lawsuit, and
23 relates to, among other things, Nevro's high-frequency paresthesia-free HF10™ therapy. I also
24 downloaded documents reflecting privileged attorney-client communications and attorney work
25 product relating to Nevro's technology.

26 20. I also used the Initial Laptop to communicate via e-mail with Nevro's in-house
27 counsel, Peter Socarras, who is the company's Director of Intellectual Property, and with outside
28 counsels Christina Lewis of Hinckley, Allen & Snyder, LLP, and Ken Kuwayti and Efrain Staino

1 of Morrison & Foerster LLP, about legal advice and strategy relating to this lawsuit.

2 21. In late December 2013, after Boston Scientific Corporation ("Boston Scientific")
3 filed this lawsuit, Nevro instructed me to stop using the Initial Laptop. I stopped using the Initial
4 Laptop at that time. On January 8, 2014, Nevro assigned me a new laptop (the "New Laptop"),
5 which I received the following day.

6 22. I have used the New Laptop to conduct limited highly confidential research on
7 computer modeling on behalf of Nevro that has not been publicly disclosed and that is irrelevant
8 to this lawsuit. The New Laptop also contains confidential documents relating to Nevro's future
9 marketing strategies. I have also used the New Laptop to communicate with Nevro employees
10 using my corporate Nevro e-mail account about highly confidential work-related matters,
11 including animal research and clinical research plans, that are irrelevant to this lawsuit.

12 23. I have also used the New Laptop to communicate via e-mail with Nevro's in-house
13 counsel, Peter Socarras, who is the company's Director of Intellectual Property, and with outside
14 counsels Christina Lewis of Hinckley, Allen & Snyder, LLP, and Ken Kuwayti and Efrain Staino
15 of Morrison & Foerster LLP, about legal advice relating to this lawsuit. The New Laptop also
16 contains documents reflecting communications with these attorneys, and documents created by
17 these attorneys that relate specifically to the strategy for this litigation.

18 24. Since approximately the middle of March 2014, I have not conducted any work for
19 Nevro and have been put on leave. Since that time, I have only used the New Laptop to
20 communicate with my attorneys about the underlying lawsuit.

21 25. As part of my Certification of Compliance with the Court's Memorandum and
22 Order on Boston Scientific's Motion for Preliminary Injunction dated May 14, 2014, I carefully
23 examined the New Laptop and did not find any Boston Scientific Proprietary Information stored
24 on the laptop.

25 26. I have not and will not disclose any confidential information belonging to Boston
26 Scientific to Nevro.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Agua Dulce, California, this 20th day of June, 2014.


DONGCHUL LEE